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10/786,184	02/25/2004	Robert D. Dressler		3695

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 11/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/786,184

Applicant(s)

DRESSLER, ROBERT D.

Examiner

Yvonne M. Horton

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 and 8-13 is/are rejected.
- 7) ☒ Claim(s) 3-7 and 14-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Status of the Claims***

As per the amendment submitted 08/24/06 claim 2 has been cancelled and claims 1 and 3-18 remain as pending.

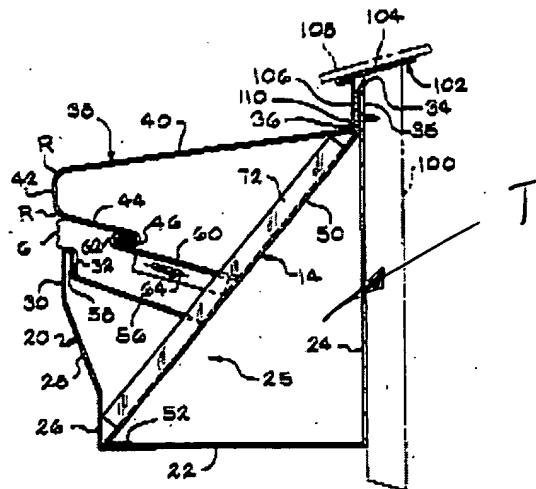
### ***Withdrawal of Allowable Subject Matter***

The indicated allowability of claims 2,8-13 is withdrawn in view of the newly discovered reference(s) to SWEET, McGLOTHLIN et al., MARTIN, and BOSLER. Rejections based on the newly cited reference(s) follow. Although claim 2 was canceled in the amendment dated 08/24/06, the allowability of the subject matter contained therein is being withdrawn.

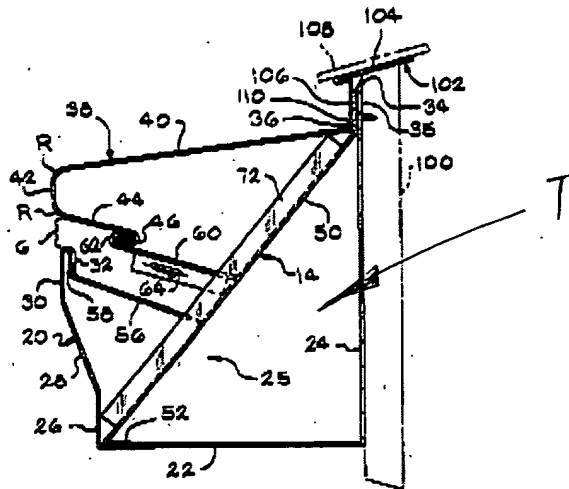
### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,737,879 to SWEET. SWEET discloses the use of a rain gutter (10) having a generally open top and including a trough portion (T) having a front face (20) with an upper lip (32), a rear wall (12), and a bottom wall (22); an integral leaf guard portion (38) extending from the rear wall (12) and terminating in an attachment lip (46) proximate the upper lip (32); a connecting member (14) that interengages the attachment lip (46) and the upper lip (32); and a mounting flange formed by an extension (35) of the rear wall (12) above the upper lip (32) and a leg (36) of the leaf guard (38) that is oriented parallel to the rear wall (12) by being bent 180 degrees therefrom.



Claims 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,737,879 to SWEET. SWEET discloses the use of a rain gutter (10) having a generally open top and including a trough portion (T) having a front face (20) with an upper lip (32), a rear wall (12), and a bottom wall (22); an integral leaf guard portion (38) extending from the rear wall (12) to the upper lip (32) to close the top of the trough (T); wherein the leaf guard (38) includes a body (40) that extends generally perpendicular to a leg member (44) that terminates in an attachment lip (46) proximate the upper lip (32) by connecting member (14). Regarding claim 9, the rear wall (12) includes an extension (35) that projects vertically above the upper lip (32) such that the rear wall



extension (35), and the leg member (36) form a mounting flange for engagement with a fastener (110) that connects the mounting flange (35,36 combined) to a support structure (100) on which the gutter (10) is mounted.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

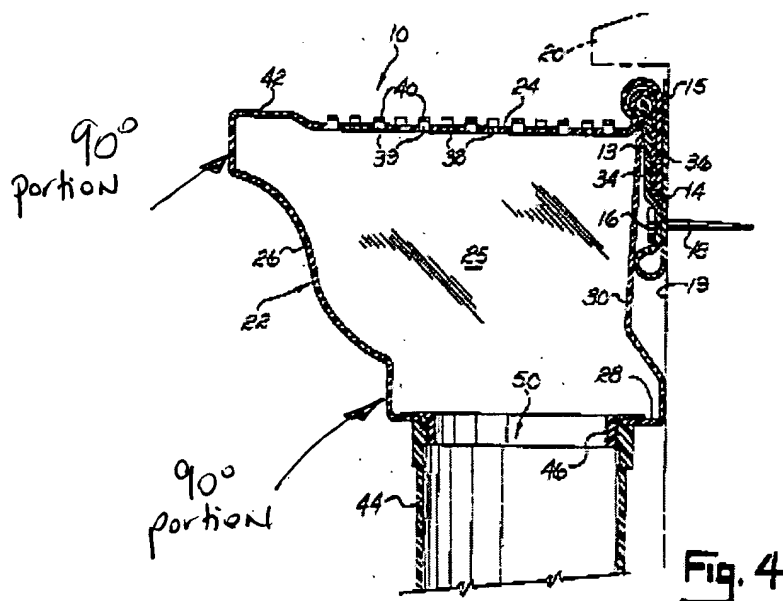
The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,737,879 to SWEET in view of US Patent #6,151,836 to McGLOTHLIN et al. SWEET discloses the basic claimed rain gutter except for the extension portion of the rear wall and the leg member having holes therein for fasteners. McGLOTHLIN et al. teaches that it is known in the art to provide the extension portion (20) and leg member (14) forming the mounting flange with holes (30) to receive fasteners (28). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the mounting flange with holes in order to facilitate an ease of attachment of fasteners therethrough.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,737,879 to SWEET in view of either US Patent #6,151,836 to McGLOTHLIN et al. or US Patent #4,912,888 to MARTIN or US Patent #4,727,689 to BOSLER. SWEET discloses the basic claimed rain gutter except for the use of drain holes in the leaf guard portion. McGLOTHLIN et al., MARTIN, and BOSLER each teach the use of drain holes (36), (30), and (38,40) formed in leaf guards (16,18), (26) and (24). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the leaf guard of SWEET with the drain holes of either McGLOTHLIN et al., MARTIN, or BOSLER in order to allow water to pass through but to thereby prevent animals, leaves and large debris items from entering and clogging the gutter. The use of drain holes increases the passage of water from the rooftop but limits the entry of enlarged items into the gutter.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,737,879 to SWEET in view of US Patent #4,727,689 to BOSLER. SWEET discloses the basic claimed rain gutter except for the use of a scalloped shaped curved front face. BOSLER teaches that it is known in the art to provide the front face (22) with a scalloped portion (26) positioned between spaced apart ninety degree bends (see below). Thus, it would have been obvious to one having ordinary skill in the art at the



time the invention was made to provide the front face of SWEET with the scalloped face of BOSLER in order to have a gutter that is decorative and aesthetically pleasing.

#### ***Allowable Subject Matter***

Claims 2-7 and 14-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

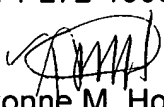
Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on (571) 272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Yvonne M. Horton  
Examiner  
Art Unit 3635

11/06/06